

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

PATRICK TOUSSAINT,	:	
	:	
Plaintiff	:	
	:	CIVIL NO. 1:CV-05-0913
vs.	:	
	:	(Judge Caldwell)
SUPERINTENDENT EDWARD KLEM,	:	
<i>et al.</i> ,	:	
	:	
Defendants	:	

M E M O R A N D U M

I. Background.

Patrick Toussaint, a state inmate formerly housed at the Mahanoy Correctional Institution ("SCI-Mahanoy"), Frackville, Pennsylvania,¹ has filed a pro se civil rights action charging he was given several false misconducts in retaliation for his filing of institutional grievances against staff; that staff made inappropriate "homosexual games and homosexual advances toward" him; that he was transferred to another housing unit at SCI-Mahanoy in retaliation for his failure to admit his sex charge; and that while at SCI-Mahanoy he was required to work as a slave. (Doc. 1).

¹ Toussaint is currently housed at SCI-Cresson in Cresson, Pennsylvania.

Presently before the Court are the following motions filed by Toussaint: (1) a motion to transfer this matter to the Eastern District (doc. 3); and (2) a motion for extension of time within which to proceed with the complaint (doc. 7). Additionally, he has applied to proceed *in forma pauperis*. (Doc. 9).

Toussaint's motion for transfer will be denied, he will be granted *in forma pauperis* standing, and in connection with his extension motion he will be granted time to file one all-inclusive amended complaint related exclusively to the events at SCI-Mahanoy.

II. Discussion.

A. Motion to Transfer.

According to Toussaint, he originally filed a civil rights complaint in the Eastern District of Pennsylvania, *Toussaint v. Klem*, 2:CV-05-1836 (E.D. Pa.). The court there dismissed the action but without prejudice to filing one in the Middle District, where venue is proper as the actions complained of occurred at SCI-Mahanoy, located in the Middle District, and none of the named defendants are in the Eastern District of Pennsylvania. For these reasons, Toussaint's motion to transfer venue to the Eastern District will be denied.

B. Motion for Enlargement of Time.

Toussaint seeks an enlargement of time to proceed with his complaint due to his placement in SCI-Mahanoy's Restricted Housing Unit and lack of access to various documents. The Court will construe this motion as a motion to file an amended complaint and a request for time to seek copies of documents from the Clerk of Court for the Eastern District. We will grant this request because a party may amend his pleading once as a matter of course at any time before a responsive pleading is served. See Fed. R. Civ. P. 15(a).

Toussaint will be granted thirty days to submit an amended complaint. Plaintiff is advised that the "amended complaint must be complete in all respects. It must be a new pleading which stands by itself as an adequate complaint without reference to the complaint already filed." *Young v. Keohane*, 809 F.Supp. 1185, 1198 (M.D. Pa. 1992). Failure to file an amended complaint will result in this case proceeding on the original complaint.

/s/William W. Caldwell
William W. Caldwell
United States District Judge

Date: June 30, 2005

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	:	
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O R D E R

AND NOW, this 30th day of June, 2005, for the reasons
set forth in the accompanying memorandum, it is ORDERED that:

1. Plaintiff's application to proceed *in forma pauperis* (doc. 2) is construed as a motion to proceed without full prepayment of fees and costs and the motion is granted.
2. The motion for extension of time (doc. 7) is granted. Within thirty days of the date of this Order, Toussaint may file an amended complaint. The amended complaint must be a new pleading which stands on its own.
3. Failure to do so will result in this case proceeding on the original complaint.
4. Plaintiff's Motion to Transfer (doc. 3) is DENIED.

/s/William W. Caldwell
William W. Caldwell
United States District Judge